

# Article 41

## *An Explanation of the Clause in the Chicago Convention Which the Ministry of Civil Aviation is Seeking to Have Deleted*

**W**HEN, in his speech at the Commonwealth Air Transport Council meeting on May 27th, Lord Nathan announced that the U.K. delegation was about to propose deletion of Article 41 of the Chicago Convention drafted at Chicago in 1944 included two articles relating to the adoption of standards: Article 90 refers to all standards, and in prescribing the procedure for adoption of all standards by the Council it leaves the Council free to select any dates for enforcement. A two-thirds majority of the Council to approve adoption is required and after a period for consideration a majority vote of member States can confirm or reject it.

Article 41 in Chapter 6, dealing with international standards and recommended practices, states that the provisions of the chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment. The obvious good intention behind Article 41 was to prevent over-hasty action by the Council or member States.

It became evident later, however, that there were serious objections, in that the Article was subject to the widest variation of interpretation since national definitions of "prototype" could vary considerably, as for example in the later marks of Spitfire, which might be considered as prototypes or merely modifications of the original pre-war Spitfire Mark I. Also the submission for certification might be interpreted as the initial application for a certificate, the commencement of flight trials, or the lodging of the type record.

The Article also might delay the bringing into force of essential safety requirements for a period too long for acceptance. For example, if an airworthiness standard recommended by I.C.A.O. was adopted in 1948, then a prototype might be submitted in two years and 11 months' time, i.e., in 1951. When the prototype flew, perhaps in 1954, three years later, it would receive a Certificate of Airworthiness, after which the aircraft would be in production for perhaps four years, the last one coming off the line in 1958, so giving that aircraft a working life until 1968. Such a possible delay of 20 years could be extended even further to about 30 years if several development versions, each based on the original prototype, were produced.

In 1946 the I.C.A.O. Airworthiness Division met, the objections were appreciated and Article 41 was considered to be unsatisfactory, and it was recommended that: Each aircraft before being operated must comply with I.C.A.O. standards if introduced into international aviation for hire or reward after January 1st, 1951. All aircraft brought into use before that date could continue to operate until January 1st, 1954, when all aircraft engaged for hire or reward must comply with I.C.A.O. standards.

The British constructors agreed those dates and since 1946

have been designing and constructing to comply with the regulations. It is, perhaps, necessary to point out that although these clauses refer to all aircraft, the present standards in fact refer to those in transport category A, which includes large or medium multi-engined aircraft. Categories for single and low-power twin-engined aircraft remain to be developed. In the following year, 1947, the Airworthiness Division of I.C.A.O. confirmed the dates, but certain delegates pointed out that their views had been based upon technical requirements, and that their representatives on the I.C.A.O. Council might state a different view, having regard to the economic consequences.

### United States Favoured Deletion

It is understood that at the last Assembly meeting the U.S. delegation unofficially suggested to the U.K. delegation that Article 41 should be deleted. The U.K. delegation was advised by the Ministry of Civil Aviation not to support the suggestion, upon which the Americans dropped the proposal.

Recently the Ministry of Civil Aviation discussed Article 41 with the S.B.A.C. and the A.R.B. and agreed that it was necessary and desirable to delete it, since legally it was meaningless and through its vagueness it was certainly dangerous. Moreover, the safeguard which Article 41 was said to offer against over-hasty introduction of new standards was considered by the S.B.A.C. and A.R.B. to be unnecessary in view of the majority vote required by Article 90.

The British delegation will move at the I.C.A.O. Assembly meeting in Geneva that Article 41 shall be deleted, but it is believed that the I.C.A.O. Council may raise objections to any such amendment of the Convention before 1950. It is important also that the question of dates for enforcing the Standards is closely related to proposals to amend the flight performance standards. The I.C.A.O. Air Standards have been substantially accepted on their technical merits with the exception of those for aircraft performance dealing with rates of climb and stalling speeds, which are considered by the U.K. to be irrational and liable to cause unnecessary economic penalties. The U.K. has already lodged a protest against the offending requirements.

At the next meeting of the Air Division the more rational performance requirements will be put forward by the U.K. delegation for discussion together with recommendations for any amendment to Article 41 if it is not deleted. All recommendations made by the committee will be pruned by the Air Navigation Committee before being submitted to the I.C.A.O. Council meeting this autumn. It is known that although the U.S. delegation in 1947 was in favour of keeping the dates, the operators may have taken the opposite view, since the dates affect mostly those aircraft which have come into service during the past four years and which have, probably, a life of 10 years. The operator's view will be expressed after the International Air Transport Association has discussed the problem.

### SIR JOHN HIGGINS

**A**IR MARSHAL SIR JOHN FREDERICK ANDREWS HIGGINS, K.C.B., K.B.E., D.S.O., A.F.C., whose death occurred at his home in Leamington on June 1st, was one of the small band of high-ranking officers to have served in the South African War, World War I and World War II. Born in 1875, he went to Charterhouse and was trained at the Royal Military Academy, afterwards serving in the South African War from 1899 to 1902. He was one of the youngest officers to be made captain in that campaign, in which he was wounded, received the Queen's Medal with four clasps, the King's Medal with two clasps, and the D.S.O.

Like many other Army officers John Higgins attempted to transfer to the R.F.C. when it was formed, but was to find that he was considered too old to be a pilot. He returned to his regiment—the Royal Artillery—keenly disappointed, and shortly afterwards was promoted major. He was then asked to enter the R.F.C., and, on declining, was ordered to do so, being seconded in October, 1912, after having qualified as a pilot at Brooklands, as a pupil of the Bristol School. He commanded No. 5 Squadron when it went to France in 1914, but in October of that year was wounded. He subsequently became C.O. of No. 4 Wing, Netheravon, and later commanded the 3rd Brigade.

Many stories are told of General Higgins's meetings with first world-war ace, Capt. Albert Ball, V.C. Unfortunately, these did not always end as agreeably as the latter would have wished. In one of his letters Captain Ball wrote: "All is going fine again and I am good friends with G. H. and all the ticks." A short time later, General Higgins, who always had a very high regard for Ball, said to him: "I am putting your name on a big board in the trenches to frighten the Huns." Ball then wrote home: "So much for the general, for I am in his good books again."

From 1924 to 1926, Sir John was A.O.C. Iraq, and was Air Member for Supply and Research of the Air Council from 1926 to 1930, when he was placed on the retired list. In 1939, however, he was recalled to the R.A.F. and was A.O.C. India until he was retired in 1940.

In addition to his Service activities, Sir John had other interests in aviation, joining the board of Armstrong Siddeley Motors, Ltd., in 1930 for five years. For the same time he was also a director of Sir W. G. Armstrong Whitworth Aircraft Co., Ltd. Just prior to the last war he took a great interest in what is now the A.T.C., and also in the Boy Scout movement, and was a prominent figure at British Legion functions. Sir John leaves a widow but no family.